

APPEAL NO. 180267  
FILED MARCH 20, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 21, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to left knee anterior cruciate ligament (ACL) tear, left knee tear of the posterior horn medial meniscus, and tear of the posterior horn lateral meniscus; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on August 11, 2017; (3) the claimant's impairment rating (IR) is four percent; and (4) the claimant had disability resulting from an injury sustained on (date of injury), from April 4, 2017, through June 25, 2017.

The claimant appealed the ALJ's determinations of MMI and IR. The claimant contends that she has not yet reached MMI. The respondent/cross-appellant (carrier) responded. The carrier also appealed, disputing the ALJ's determinations of the extent of the compensable injury, MMI, IR, and disability. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed in part and reversed and rendered by striking in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and the carrier has accepted a compensable injury in the form of a left knee strain and left knee contusion, including bone contusions to the posterior tibial plateau, posteromedial tibial plateau, and mid-lateral femoral condyle. The claimant testified she injured her left knee when running from a rodent.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), extends to a left knee ACL tear, left knee tear of the posterior horn medial meniscus, and tear of the posterior horn lateral meniscus is supported by sufficient evidence and is affirmed.

### **MMI/IR**

The ALJ's determination that the claimant reached MMI on August 11, 2017, is supported by sufficient evidence and is affirmed.

The ALJ's determination that the claimant's IR is four percent is supported by sufficient evidence and is affirmed.

### **DISABILITY**

The disability issue in dispute reported in the Benefit Review Conference (BRC) Report was as follows:

Did the [claimant] have disability resulting from an injury sustained on [(date of injury)], from [April 6, 2017], through [June 25, 2017]?

The ALJ read the disability issue from the BRC Report at the CCH and the parties agreed that was the period of disability in dispute. However, in the Decision and Order the ALJ listed the disability issue as follows:

Did the claimant have disability resulting from an injury sustained on (date of injury), from April 4, 2017, through June 25, 2017?

The ALJ found in Finding of Fact No. 4 that from April 6, 2017, through June 25, 2017, the compensable injury was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wage. That finding is supported by sufficient evidence. However, the ALJ determined that the claimant had disability resulting from an injury sustained on (date of injury), from April 4, 2017, through June 25, 2017. The ALJ found a period of disability two days before the time period at issue before her. Accordingly, we reverse that portion of the ALJ's disability determination by striking that portion of the ALJ's disability determination that the claimant had disability from April 4, 2017, through April 5, 2017, as exceeding the scope of the disability issue. That portion of the ALJ's determination that the claimant had disability from April 6, 2017, through June 25, 2017, is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to a left knee ACL tear, left knee tear of the posterior horn medial meniscus, and tear of the posterior horn lateral meniscus.

We affirm the ALJ's determination that the claimant reached MMI on August 11, 2017.

We affirm the ALJ's determination that the claimant's IR is four percent.

We affirm that portion of the ALJ's determination that the claimant had disability from April 6, 2017, through June 25, 2017.

We reverse that portion of the ALJ's disability determination that the claimant had disability from April 4, 2017, through April 5, 2017, by striking.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge